

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

<b>STATE OF MISSOURI, ex rel.</b>	)	
<b>Attorney General Chris Koster,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No:</b>
	)	<b>Division:</b>
<b>Auto Credit Mart, LLC.</b>	)	
<b>a/k/a Auto Credit Mart</b>	)	
	)	
<b>Serve: 6434 Telegraph Rd.</b>	)	
<b>St. Louis, MO 63129</b>	)	
	)	
<b>Joby Aaron Schraier</b>	)	
	)	
<b>Serve: 6434 Telegraph Rd.</b>	)	
<b>St. Louis, MO 63129</b>	)	
	)	
	)	
<b>Heather Lynn Schraier</b>	)	
	)	
<b>Serve: 6434 Telegraph Rd.</b>	)	
<b>St. Louis, MO 63129</b>	)	
	)	
<b>and</b>	)	
	)	
<b>Automotive Acceptance Company LLC)</b>	)	
	)	
<b>Serve: Registered Agent</b>	)	
<b>Joby A. Schraier</b>	)	
<b>9440 Saint Charles Rock Rd)</b>	)	
<b>St. Louis, MO 63114</b>	)	
	)	
<b>Defendants.</b>	)	

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIONS,  
RESTITUTION, CIVIL PENALTIES AND OTHER COURT ORDERS**

COMES NOW Plaintiff the State of Missouri, ex rel. Chris Koster, Attorney General, by and through Assistant Attorney General Debra L. Snoke-Adams, for its Petition for Preliminary and Permanent Injunctions, Restitution, Civil Penalties and Other Court Orders, against Auto Credit Mart, LLC, also known as, Auto Credit Mart, Joby Aaron Schraier and Heather Lynn Schraier, and Automotive Acceptance Company LLC and upon information and belief states as follows:

### **PARTIES**

1. Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapter 407, RSMo 2010.<sup>1</sup>

2. Defendant Auto Credit Mart, LLC was a Missouri limited liability company that transacted business in St. Louis County, Missouri, among other places. Its principal place of business was located at 9440 St. Charles Rock Road, St. Louis, Missouri 63114. The business was administratively dissolved by the Missouri Secretary of State.

3. Defendant Auto Credit Mart, LLC is also a fictitious name registered with the Missouri Secretary of State and the owner of the

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<sup>1</sup> All references are to Missouri Revised Statutes 2010, unless otherwise noted. Where a citation gives a supplement year—*e.g.* “(Supp. 2012)” —the citation is to the version of the statute that appears in the corresponding supplementary version of the Missouri Revised Statutes, and, where relevant, to identical versions published in previous supplements.

registered name is Heather Lynn Schraier.

4. Defendant Auto Credit Mart is a fictitious name registered with the Missouri Secretary of State and the owner of the registered name is Joby Aaron Schraier.

5. Defendant Joby Aaron Schraier is an individual and an owner and operator of the business, Auto Credit Mart, LLC, a/k/a – Auto Credit Mart. Defendant resides at 6434 Telegraph Road, St. Louis, Missouri 63129

6. Defendant Heather Lynn Shraier is an individual and an owner and operator of the business, Auto Credit Mart, LLC, a/k/a - Auto Credit Mart. Defendant resides at 6434 Telegraph Road, St. Louis, Missouri 63129.

7. Defendant Automotive Acceptance Company LLC is a limited liability company registered to do business in the State of Missouri.

8. Any acts, practices, methods, uses, solicitations or conduct of the Defendants alleged in this Petition include the acts, practices, methods, uses, solicitations or conduct of Defendants and Defendants' employees, agents, or other representatives acting under Defendants' direction, control, or authority.

9. Defendants Auto Credit Mart, Joby Aaron Schraier and Heather Lynn Schraier have done business within the State of Missouri by marketing, advertising, offering for sale, and selling automobiles.

10. Defendant Automotive Acceptance Company LLC ("AAC") is a

limited liability company organized to do business within the State of Missouri, and whose principal business operation consists of contracting with consumers for the financing of vehicle purchases car dealers in Missouri and elsewhere and collecting payments of principal and interest from individuals who have purchased automobiles. WFI can be served at the office of the registered agent listed in the caption above.

### **JURISDICTION**

11. Jurisdiction is properly vested with this Court under Art. V, § 14 Mo. Const.

12. This Court has subject matter and personal jurisdiction over the Defendants under Art. V, § 14 Mo. Const.

13. This Court has authority over this action pursuant to § 407.100, which allows the Attorney General to seek injunctive relief, restitution, penalties, and other relief in circuit court against persons who violate § 407.020.

### **VENUE**

14. Venue is proper in this Court pursuant to § 407.100.7, which provides that “[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.”

15. Defendants have marketed, advertised, offered, and sold automobiles in St. Louis County, Missouri, and have engaged in the acts, practices, methods, uses, solicitation and conduct described below that violate § 407.020, RSMo in St. Louis County, Missouri.

### **MERCHANDISING PRACTICES ACT**

16. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

17. “Person” is defined as “any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.” § 407.010(5).

18. “Merchandise” is defined as “any objects, wares, goods,

commodities, intangibles, real estate, or services.” § 407.010(4).

19. “Trade” or “commerce” is defined as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms “trade” and “commerce” include any trade or commerce directly or indirectly affecting the people of this state.” § 407.010(7).

20. Defendants have advertised, marketed, and sold merchandise in trade or commerce within the meaning of § 407.010.

21. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in Sections 407.010 to 407.145 of the Merchandising Practices Act. Said Rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to the Merchandising Practices Act allegations herein include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

### **SALE AND TRANSFER OF VEHICLES**

22. Section 301.210 of the Missouri Revised Statutes provides in pertinent part:

1. In the event of a sale or transfer of ownership

of a motor vehicle or trailer for which a certificate of ownership has been issued, the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, and prescribed by the director of revenue, with a statement of all liens or encumbrances on such motor vehicle or trailer, and deliver the same to the buyer at the time of the delivery to him of such motor vehicle or trailer...

23. Dealer, as the certificate owner of a vehicle, has a legal right to transfer possession of a vehicle to a buyer pending completion of the sale. Physical transfer of possession creates an executor contract between dealer and buyer which grants buyer the right to compel assignment of the certificates of ownership from dealer; and consequently the right to seek delivery of the certificates from floor plan financier. *Bradley v. K & E Investments*, 847 S.W.2d 915, 920 (Mo. App. 1993).

### **ALLEGATIONS OF FACT RELEVANT TO ALL COUNTS**

24. Defendants began operating Auto Credit Mart, LLC. in 2009 as an automobile dealership that marketed, advertised, offered to sell and sold automobiles to consumers.

25. Defendants contracted with floor planner Automotive Finance Corporation (“Floor Planner”) that offered financing services to automobile dealerships.

26. The Floor Planner loaned the Defendants money to purchase automobiles from auctions in return for a security interest in any vehicles that Defendants purchased.

27. The Floor Planner kept physical possession of certificates of title of the automobiles in Defendant's inventory.

28. The Floor Planner withheld transfer of titles from Defendants in order to assure repayment on Defendants loan.

29. When Defendants sold an automobile to a consumer, Defendants were required to pay the Floor Planner before the Floor Planner would release the title to Defendants.

30. Despite knowing that they did not possess the titles, Defendants sold vehicles and promised consumers that they would provide titles to the vehicle after sale or transfer.

31. Defendants, pursuant to § 301.210, RSMo, were required to transfer motor vehicle titles to buyers at the time of sale or transfer of the vehicle.

32. Defendants sold vehicles to consumers without providing the title at the time of the sale. Defendants promised to provide titles to the purchasers on a later date, but failed to do so for consumers.

33. Defendants Auto Credit Mart did not provide titles to the consumers before closing the business in August 2011.



34. When Defendants sold a vehicle to a consumer they had the consumer sign a number of documents at the dealership, including a Motor Vehicle Installment Contract (“MVIC”) or Retail Installment Sales Contract (“RISC”).

35. The forms that consumers signed at Defendants’ dealership were provided by Defendants and contained either Western Funding Incorporated’s logo and letterhead or Automotive Acceptance Company LLC’s letterhead stating that the financing for the purchase was to be handled by one of these two companies.

36. Consumers notified Defendants and Western Funding Incorporated that they did not receive the title.

37. Automotive Acceptance Company LLC and Western Funding Incorporated enforced the installment contracts knowing that the consumers did not have the title and could not use the vehicle.

38. Some consumers had their vehicles repossessed by unidentified persons claiming to be acting on behalf and at the direction of Defendants.

39. In October 2012 Defendants, Auto Credit Mart executed a promissory agreement with the Floor Planner to pay money owed for already sold vehicles. Under the terms of the agreement, the Floor Planner agreed to release a number of consumer titles to Defendant Auto Credit Mart.

40. At a later date in 2012, over a year after selling and delivering the automobiles to the consumers, Defendant Auto Credit Mart, Joby Schraier, or Heather Schraier mailed titles to some consumers. These consumers no longer had the vehicles in their possession because they never had the ability to register or drive the vehicles, so they returned the titles to Defendant Auto Credit Mart.

41. At some point, Defendant Auto Credit Mart, Joby Schraier, or Heather Schraier also sent copies of these titles to Western Funding Incorporated (“WFI”).

42. The copies of the titles from WFI and the titles sent to consumers are not identical documents, as the titles sent to WFI have the consumers’ signatures on them.

43. Several consumers have asserted that they never signed these titles and their signatures are forged.

44. As a result of Defendants’ actions, at least fifty consumers have paid or financed approximately \$140,000 for automobiles they did not receive titles for when they accepted delivery of the vehicle.

#### Consumer Examples

45. Defendants sold vehicles to the following consumers and did not provide titles at the time of sale:

- a. Tierra Thomas, who contracted with Defendants on or about August 10, 2011, purchased a 2002 Pontiac Bonneville for \$4,800.00;
- b. Alfred Walker, who contracted with Defendants on or about February 25, 2010, purchased a 2001 Pontiac Bonneville for \$7,995.00;
- c. Tara Pesnell, who contracted with Defendants on or about June 7, 2011, purchased a 2003 Chevy Trail Blazer for \$8,500.00; and
- d. Ardella Williams, who contracted with Defendants on or about June 17, 2011, purchased a 2000 Nissan Sentra for \$4,900.00.

46. Defendants Auto Credit Mart, LLC, Joby Aaron Schraier and Heather Lynn Schraier sold vehicles to the following consumers and assigned the Retail Installment Contract and Security Agreement (“RISC”) to Western Funding Incorporated, but did not transfer title when the vehicle was delivered:

- a. Taneka Jefferson, who contracted with Defendants on or about August 19, 2011, purchased a 2005 Pontiac Grand Prix for \$10,000.00;
- b. Hosea Robinson, who contracted with Defendants on or about April 4, 2011, purchased a 1997 Pontiac Sunfire for \$5,995.00.

- c. Katrice Roy, who contracted with Defendants on or about March 26, 2011, purchased a 2006 Dodge Stratus for \$8,995.00; and
- d. Sharonda Phillips, who contacted with Defendants on or about April 11, 2011, purchased a 2006 Chevy Malibu for \$6,900.00.

47. Defendants Auto Credit Mart, LLC, Joby Aaron Schraier and Heather Lynn Schraier sold vehicles to the following consumers and the consumer used their vehicle as a trade-in for the purchase of the vehicle. Defendants applied the trade-in amount to the purchase of the newer vehicle, but did not transfer title when the vehicle was delivered:

- a. Joyce Jacox, who contracted with Defendants on or about August 7, 2011. She traded her 1995 Ford Explorer for \$1,000.00 and the money was applied to the retail sales contract for the purchase of a 2006 Ford Focus for \$8,000.00;
- b. Brian Gray, who contracted with Defendants on or about November 22, 2009. He traded his 1996 Mazda 626 for \$900.00 and the money was applied to the retail installment sales contract for the purchase of a 1997 Chevy Tahoe for \$6,500.00.

48. Defendants repossessed the vehicles of the following consumers although they knew the consumer had not received title to the vehicle:

- a. Joyce Jacox, who contracted with Defendants on or about August 7, 2011.
- b. Lisa Reid, who contracted with Defendants on or about March 26, 2011.

### **VIOLATIONS OF LAW**

#### **COUNT I – FALSE PROMISE Against All Defendants**

44. Plaintiff incorporates all allegations stated above.

45. Defendants violated Section 407.020 by falsely promising consumers that within thirty days of purchasing the vehicle, Defendants would provide the vehicle's title to the consumer without intention or ability to perform as promised, or the likelihood the promise would be performed.

#### **COUNT II: DECEPTION Against Defendants Auto Credit Mart, LLC, Jobi Aaron Schraier, and Heather Lynn Schraier**

46. Plaintiff incorporates all allegations stated above.

47. Defendants violated Section 407.020 by using deception in that Defendants engaged in acts or practices which had the tendency or capacity to mislead, deceive, or cheat and tended to create the false impression that Defendants had the ability to transfer the certificates of title for the vehicles being sold and delivered to consumers when in fact Defendants did not physically possess the certificates of title.

**COUNT III: CONCEALMENT, SUPPRESSION, OR OMISSION OF A  
MATERIAL FACT**

**Against Defendants Auto Credit Mart, LLC, Jobi Aaron Schraier,  
and Heather Lynn Schraier**

48. Plaintiff incorporates all allegations stated above.

49. Defendants violated Section 407.020 by concealing, suppressing, or omitting, the material fact that Defendants did not physically possess the certificates of title to be able to transfer them to consumers at the time of delivery.

**COUNT IV: UNFAIR PRACTICE  
Against All Defendants**

50. Plaintiff incorporates all allegations stated above.

51. Defendants violated Section 407.020 by engaging in the unfair practice of selling and delivering automobiles to buyers without passing or transferring title in direct violation of § 301.210, RSMo, a statute intended to protect the public.

52. Defendants' violation presents the risk of, and causes substantial injury to consumers because violations of § 301.210 harmed, and will continue to harm, car dealership customers.

53. Defendant, Automotive Acceptance Company LLC, also liable as assignee of the RISC, has violated the MPA by refusing and continuing to refuse either to tender a certificate of title to consumers who purchased a vehicle or rescind the void sale.

**COUNT V: FRAUD**  
**Against All Defendants**

54. Plaintiff incorporates all allegations stated above.

55. Plaintiff incorporates herein all preceding paragraphs as though fully set forth herein.

56. RSMo §301.210.4 declares that the sale of a motor vehicle without transfer of title is fraudulent.

57. Defendants Auto Credit Mart, LLC, Jobi Aaron Schraier, and Heather Lynn Schraier sold or purported to sell, vehicles to consumers and did not transfer the title; therefore, the transaction constituted fraud as a matter of law.

58. Defendant Automotive Acceptance Company LLC, as assignee of the RISC, is subject to all claims and defenses that could have been asserted against Auto Credit Mart, LLC; thus AAC is derivatively liable for Auto Credit Mart's fraud.

59. Despite having been on notice of this fraud, including contact by consumers, advising AAC that they did not have a title, AAC has taken no action to address its fraud, including recognizing the rescission of the void RISC and tendering back to the consumers their monies paid under the void contract.

60. The Defendants have obtained duplicate titles of consumers' vehicles and then unlawfully repossessed the vehicles for resale to other consumers.

**COUNT VI: DECEPTION**  
**Against Defendant Automotive Acceptance Company, LLC**

61. Plaintiff incorporates all allegations stated above.

62. Defendant violated Section 407.020 by using deception in that Defendant engaged in acts or practices which had the tendency or capacity to mislead, deceive, or cheat and tended to create the false impression that consumers were required to continue to pay the RISC when it knew that the original sale was void due to the failure to transfer title at the time of delivery of the vehicle.



## **RELIEF**

WHEREFORE, Plaintiff prays this Court enter judgment:

- A. Finding that the Defendants violated the provisions of Section 407.020.
- B. Issuing Preliminary and Permanent Injunctions issued pursuant to §§ 407.100.1 and 407.100.2 prohibiting and enjoining the Defendants and its agents, servants, employees, representatives and other individuals acting at its direction or on its behalf from selling automobiles in the State of Missouri.
- C. Requiring the Defendants pursuant to § 407.100.4 to provide full restitution to all consumers who suffered any ascertainable loss, including but not limited to any monies or property acquired by Defendants through unlawful practices.
- D. Requiring the Defendants pursuant to § 407.100.6 to pay the State of Missouri a civil penalty in such amounts as allowed by law per violation of Chapter 407 that the Court finds to have occurred.
- E. Requiring the Defendants pursuant to § 407.140.3 to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against the Defendants, or such other amount as the Court deems fair and equitable.

F. Requiring the Defendants pursuant to § 407.130 to pay all court, investigative and prosecution costs of this case.

G. Granting any further relief that this Court deems proper.

Respectfully submitted,  
CHRIS KOSTER  
Attorney General

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